

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IN RE:) CASE NO: 19-10926-TMD
) CHAPTER 7
)
ORLY GENGER,) Austin, Texas
)
) Tuesday, November 5, 2019
Debtor.)
) 2:29 p.m. to 2:39 p.m.

COURT'S RULING

BEFORE THE HONORABLE TONY M. DAVIS,
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES: See page 2

Courtroom Deputy: CRD Jennifer

Court Recorder: ECRO Laurie

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1 Austin, Texas; Tuesday, November 5, 2019; 2:29:45 p.m.

2 (Partial transcript - Ruling of Court)

3 **THE CLERK:** All rise.

4 **THE COURT:** Please be seated.

5 This is my oral Ruling on the matter of transfer of
6 venue of the bankruptcy case of *Genger*, 19-10926.

7 I'm going to start with the economic administration
8 of the estate.

9 According to the Fifth Circuit this is the most
10 important factor, the Trustee here has already conducted an
11 investigation and reached a settlement. A move to New York
12 could lead to a new Trustee, and a need for that Trustee to
13 investigate anew and redo what has been done for the past
14 several months. But it's not clear how much, in fact, has been
15 done.

16 The 9019 is only 14 pages and is mostly platitudes,
17 very sparse description of the many facts in play here and it
18 does not even identify, let alone discuss, the issues being
19 settled.

20 For example, statute of limitations is mentioned.
21 Well, for which cause of action, fraudulent conveyance?

22 New York has a six-year statute with a discovery
23 rule, none of which is addressed, and that's just one of the
24 many, many material issues. That's as to Austin, as to New
25 York, there are lots of lawsuits, some resolved, some pending,

1 all in New York and this has been going on for 10 years.

2 Nonparties to the bankruptcy are involved in those suits.

3 It's easier for a New York Trustee to navigate, can
4 simply remove State Court litigations, does not have to
5 transfer it, and can also more easily address the matters on
6 appeal.

7 And, finally, the Trustee's settlement has not been
8 approved.

9 All of these favor the Movants and for the following
10 reasons:

11 The very reason for this bankruptcy is the ongoing
12 related lawsuits that are all pending in New York. It doesn't
13 matter where the bankruptcy was filed because of the pending
14 turnover Motion or the Second Circuit's decision to affirm
15 Genger.

16 Two, the bankruptcy will create a new layer of
17 litigation that arises from the same transactions, facts and
18 set of occurrences that are the subject of litigation that has
19 been concluded and the litigation that remains pending in New
20 York.

21 In particular I'm thinking of the Section 727
22 adversaries in which the Debtor will be required to explain
23 what happened to 32 million dollars, and in either a fraudulent
24 transfer suit or the hearing to consider a 9019 settlement of
25 that suit. Findings made by the New York courts previously may

1 well have collateral estoppel effect in this latest layer of
2 litigations spawned by the bankruptcy filing.

3 When litigation like this gets fractured it creates
4 turf wars, and by that I don't mean Judges fight for cases, I
5 mean the question of where will have to be fought time and time
6 again and will not always get resolved consistently. It's far
7 more efficient for the parties to the bankruptcy and to the
8 related litigation to litigate in one District Court rather
9 than two, particularly where the two are either 1,500 or 1,700
10 miles apart.

11 I am not persuaded by the point that the Debtor is
12 not a party to the fraudulent transfer suit. It's clearly an
13 important part of the administration of this estate. Not only
14 is this the most important factor legally in this case, the
15 facts that bear upon this factor by far outweigh the facts
16 bearing upon the other factors.

17 Also, in the abacus case Judge Clark made much of the
18 need for a Judge to be able to "evaluate the case in the new
19 you in which the Debtor operates."

20 The new you in which this Debtor has operated for the
21 past decade has been New York State and Federal Courts.

22 The next factor, the proximity of creditors of every
23 kind in Court, Mr. Herschmann is in Austin, Mr. Arie Genger,
24 the father, is in Florida. Mr. Herschmann has access to a
25 house in New Jersey, he has an office in New Jersey -- or in

1 New York.

2 Mr. Arie Genger is in Florida, has traditionally
3 maintained an office in New York and it's just as easy to get
4 to New York as it is to get to Texas. This factor slightly
5 favors Movants.

6 Debtor argues that they're not really creditors and
7 the Movants bear the burden of proof, but in the In Re:
8 Columbia case, 183 BR 660 the Court found the creditors with
9 disputed claims should have the right to complain about venue
10 because their claims will have to be litigated wherever the
11 case ends up.

12 Here the Debtor has satisfied the Movants burden by
13 listing the disputed claims in her schedules, I guess I
14 neglected to mention other creditors, Kasowitz has a New York
15 office, Market Sureties (phonetic) in Connecticut, Orly Trust
16 is in Arkansas, Sagi is in Connecticut with counsel in New
17 York.

18 The fact that the AG/OG parties in 2017 elected to
19 have an important agreement covered by New York law is
20 meaningful; that's Exhibit 16.

21 Again, this dispute over the disputed claims has, in
22 part, been the subject of litigation in the New York Courts.

23 To the extent that this goes to convenience, though,
24 is not significant. The Debtor and these alleged creditors are
25 all highly mobile.

1 The proximity of the bankrupt, the Debtor, to the
2 Court, the Debtor lives in Austin. By her testimony the Debtor
3 has access to a house in the New Jersey suburb of New York.

4 Relevant to this factor and others it was the Debtor
5 that chose New York State Courts as a venue on at least three
6 occasions. This favors the Debtor, but it's not a significant
7 factor. She can easily get to New York. This highly mobile
8 individual can clearly be where she needs to be, and she has a
9 house available in New Jersey, again, according to her
10 testimony.

11 The proximity of witnesses necessary to the
12 administration of the estate.

13 The Debtor is in Austin, the Debtor's husband is in
14 Austin. The Debtor's accountant, Mr. Fisher, is in New York.

15 Mrs. Genger, the mother, was last in New York. Bowen
16 is in New York, Woktell (phonetic) is in New York, Sagi is in
17 Connecticut, both Brogers (phonetic) are in New York, the Trust
18 is in Arkansas.

19 The arbitration provisions mentioned by Mr. Jordan
20 are not in evidence.

21 This factor favors the Movants, but it's not a
22 significant factor. Everyone is lawyered up in both New York
23 and Austin, everyone can get to where they need to be, or at
24 least compel testimony under Rule 45.

25 The location of assets:

1 The condo and personal property are both located in
2 Austin. The Debtor claims that the lawsuits, including the two
3 notes payable to her lawyers, are not assets at all. Movants
4 claim they are. This dispute which must resolve one way or
5 another is a big part of the litigation that has been pending
6 in New York all these years.

7 The issues related to the condo, the gift and the
8 pledge, will be only a fraction of the issues dealt with in the
9 fraudulent conveyance and nondischarge cases. The other issues
10 all relate to the 32 million and where it went, all of which
11 has been the subject of more than a decade of litigation
12 pending in New York.

13 On the interest of justice, both sides would have me
14 side with one side or the other, but I refuse to do that so I
15 am doing neither justice nor injustice, I am leaving that to
16 the Courts that have been dealing with this for the past
17 decade.

18 Some Courts have found that there is a presumption in
19 favor of Debtor's choice of forum, or that deference should be
20 given to the Debtor.

21 Other Courts, including the Fifth Circuit, have found
22 that a Plaintiff's choice of venue is just something to take
23 into account when considering that the Movant -- in considering
24 whether the Movant has met its burden; that's Volkswagen of
25 America 545 F3d 304, Fifth Circuit, 2008, and then there's the

1 Lucas case 2012 Westlaw 5198368, Judge Isgur found that though
2 Volkswagen was not a bankruptcy case:

3 "The same analysis undercuts a home Court presumption
4 in bankruptcy cases as well."

5 Even if there were such a presumption in the Fifth
6 Circuit it's entitled to very little weight here. Judge
7 Austin's decision has little in common with my decision,
8 different legal principles, but his finding, after looking at
9 many of the same Declarations I have looked at, is germane.

10 As Judge Austin observed this Debtor can and will
11 claim residence in a location that suits her legally strategic
12 interests. The Debtor retained Texas bankruptcy counsel in
13 August of 2018. Since she got married in 2016 in Israel she
14 lived for a short time in Texas, and until February of 2019,
15 when she moved to Texas, lived for a long periods of time in
16 New York and Tel Aviv. This is based on her testimony and it's
17 corroborated by the American Express statements.

18 In November of 2018, three months after hiring Texas
19 bankruptcy counsel, and while the Debtor twice testified that
20 the decision to move to Texas was "cooking for awhile," her
21 lawyer stated that the Debtor "previously residing in New
22 York," this is her lawyers, "already was married in Israel in
23 September 2016 and shortly thereafter she permanently moved to
24 a Tel Aviv home newly purchased by her husband."

25 Her testimony is that shortly after this statement

1 was made, the decision to move to Texas was made and was made
2 based on a desire to be able to more easily see the adult
3 children and due to her husband's travel.

4 What's important to note is that she had, months
5 before then, retained Texas bankruptcy counsel and had already
6 suffered many adverse decisions from New York Courts. The
7 inference is clear that the move to Texas in February of 2019
8 was at least, in part, prompted by a desire to file bankruptcy
9 in Texas should it become necessary to get away from the New
10 York Courts.

11 Motion is granted as to the change of venue to the
12 Southern District of New York of both the case and all
13 associated adversaries. I leave the alternative relief of
14 dismissal for a decision by the Southern District of New York.

15 We are adjourned.

16 **(This proceeding was adjourned at 2:39:40 p.m.)**

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



November 9, 2019

signed

Dated

TONI HUDSON, TRANSCRIBER